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(1)

Supreme Court, U.S.
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No. 08-740

SUPREME COURT OF THE UNITED STATES

OTTO CURRAS ORTIZ;

Petitioner,

V.

PUERTO RICO SUPREME COURT

Respondent

Petition for Writ of Certiorari to the
Supreme Court of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

ANTONIO BAUZA TORRES
Condominio Le Mans, Suite 402
602 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
TEL. (787) 766-0723 /
FAX (787) 751-1774
Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the due process guarantees of the Fifth and Fourteenth Amendment to the U.S. Constitution are violated when an unlawfully constituted state supreme court, operating without proper composition or quorum, adjudicates motions and enters final orders removing attorney from his profession.

LIST OF PARTIES

Petitioner is Mr. Otto Curras, a private citizen and domiciliary of San Juan, Puerto Rico. Respondent in this matter is the Puerto Rico Supreme Court, the highest court of the Commonwealth of Puerto Rico.

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PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts Jr., Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Mr. Otto Curras Ortiz ("petitioner") respectfully petitions this Court for a writ of certiorari to review the adjudications and final orders of the Puerto Rico Supreme Court in this case after July 31, 2008 when it no longer counted with the minimum number of sitting Justices required under the Puerto Rico Constitution for said court to remain properly constituted.

OPINIONS BELOW

The Puerto Rico Supreme Court entered Judgment and *Per Curiam* Opinion in this matter on July 31, 2008 under case number CP-2003-1 (Appendix A). Motion for reconsideration (Appendix B) and a separate motion soliciting provisional remedies (Appendix C) were timely filed on September 5, 2008. The motions were denied by Order entered on September 11, 2008 (Appendix D). Subsequently, a second motion for reconsideration was timely filed on September 17, 2008 (Appendix E) and denied by order of September 22, 2008 (Appendix F) which is the last and final order entered in the matter.

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this Honorable Court pursuant to 28 U.S.C. §1257

because the final judgment of the highest court of Puerto Rico has been rendered. The petition is being filed within 90 days of the last order entered by the Puerto Rico Supreme Court in the matter, dated September 22, 2008.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. CONSTITUTION

Amendment V to the Constitution of the United States of America states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV to the Constitution of the United States reads in relevant part: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

PUERTO RICO CONSTITUTION

Article 1 § 1 of the Constitution of Puerto Rico states: "The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America."

Article 1 § 2 of the Constitution of Puerto Rico states: "The government of the Commonwealth of Puerto Rico shall be republican in form and its legislative, judicial and executive branches as established by this Constitution shall be equally subordinate to the sovereignty of the people of Puerto Rico."

Article 5 § 1 of the Constitution of Puerto Rico states: "The judicial power of Puerto Rico shall be vested in a Supreme Court, and in such other courts as may be established by law."

Article 5 § 2 of the Constitution of Puerto Rico states: "The courts of Puerto Rico shall constitute a unified judicial system for purposes of jurisdiction, operation and administration. The Legislative Assembly may create and abolish courts, except for the Supreme Court, in a manner not inconsistent with this Constitution, and shall determine the venue and organization of the courts."

Article 5 § 3 of the Constitution of Puerto Rico states: "The Supreme Court shall be the court of last resort in Puerto Rico and shall be composed of a Chief Justice and four Associate Justices. The number of Justices may be changed only by law upon request of the Supreme Court."

STATUTES

PR Public Law 600 of the 3rd of July of 1950, Chapter 446, 64 Stat. 314. Said statute states in relevant part: "It is decreed by the Senate and House of Representatives of the United States, assembled in Congress, that, in ample recognition of the principle of government by consent of those governed, this law is adopted, as a compact, so that the people of Puerto Rico can establish a government in a manner consistent with the constitution that they adopt."

STATEMENT OF THE CASE

The proceedings that give origin to the question presented for review in this matter revolve around alleged ethical violations occurring during civil actions involving the division of three separate hereditary estates. In 1987, and upon the death of his uncle Miguel Ortiz Marrero, petitioner Otto Curras filed an action seeking a "Declaration of Heirs"[1] where he was declared sole heir to his late uncle's estate consisting of $48,366.59 in deposited bank funds. Nearly five years later, in the year 1992,

[1] A "Declaration of Heirs" is a civil mechanism by which the Puerto Rico courts name and declare who are the lawful heirs to a hereditary estate in order for its division to be completed in accordance to law.

the wife and two daughters of the decedent, who resided in North Carolina and New Jersey respectively, filed ethics complaints against petitioner Otto Curras alleging, *Inter Alia*, that they were the legitimate heirs to the estate of Miguel Ortiz Marrero; that they did not know Mr. Otto Curras personally but that they knew of him; that they believed Mr. Otto Curras knew that his uncle had married in the United States and had two daughters; that Mr. Curras had additional family members within Puerto Rico; and that the Declaration of Heirs obtained by him declaring him the sole heir of Mr. Miguel Ortiz Marrero's estate was obtained through fraudulent means.

In his defense, Mr. Otto Curras raised that he did not know that his uncle had any legitimate heirs in the United
States, and that while additional heirs of his uncle existed within Puerto Rico, none of them had interest in the inheritance and that they all had consented to him being declared sole heir. Curras submitted the sworn statement of Mrs. Myrta Rivera Ortiz, one of such heirs, to the effect that she like the rest of the heirs had no interest in the inheritance of her uncle, and that she too had no idea that her uncle had family in the United States. The situation above resulted in Mr. Curras receiving the sanction of disbarment for a year, and removal as a notary for two years, after disciplinary proceedings.[2]

During that time, in 1991, one Nemesia Curras Figueroa, aunt to petitioner Otto Curras also passed away. Mrs. Curras Figueroa, who never had any children, had become widowed nine months

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[2] In Re: Otto H. Curras Ortiz, 141 DPR 127 (1996).

earlier when her late husband Jose R. Aponte Palma died. Later, in 1993, the heirs of Mr. Aponte Palma initiated suit against the heirs of Mrs. Curras Figueroa seeking the division and distribution of the assets and property accumulated by the late couple during their marriage.[3] Aponte Palma's heirs claimed that the only marital asset subject to division was certain real estate property in the municipality of Caguas, Puerto Rico were the decedents had resided. The Curras heirs, represented by petitioner, insisted that the marital assets subject to division included in excess of $1.8 million dollars deposited in various bank accounts.

The heirs of Mr. Aponte Palma contended that said monies were his personal property, not subject to division, but only after initially attempting to hide the existence of the accounts. After very contentious litigation, the Puerto Rico Superior Court, Caguas Division, entered judgment holding that the contested 1.8 million dollars constituted marital property subject to division between the estates of Mr. Jose R. Aponte Palma and Mrs. Nemesia Curras Figueroa. Petitioner Otto Curras then sought a "Declaration of Heirs" declaring him and various uncles and cousins heirs to the estate of Nemesia Curras Figueroa.[4]

At the same time, the Aponte Palma heirs initiated a parallel suit in the Puerto Rico Superior Court, Caguas Divison, under the civil case number

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[3] The case was filed in the Puerto Rico Superior Court, Caguas Division, under the caption and number Estate of Aponte Palma v. Estate of Nemesia Curras, EAC-93-0061 (612).

[4] The case civil action was filed in the Puerto Rico Court of First Instance, Caguas, on January 19, 1993 and under civil case number CD-93-126.

EAC 92-0327, seeking the judicial appointment of an executor to the decedents' estate. During the above proceedings, which later became consolidated, the Aponte Palma heirs raised the issue that one of the Curras heirs was a mentally disabled person[5], and that it appeared that the court was not made aware of that fact. The court referred the matter to the Puerto Rico Supreme Court for an ethics investigation of all the attorneys involved in the case. The Supreme Court then referred the matter to the office of the solicitor general, for a complete investigation and pursuit of potential disciplinary measures.

Mr. Otto Curras Ortiz was ultimately charged with four ethical violations, based upon the findings by the solicitor general alleging that he had misled the court and additionally that he had failed to be completely honest and truthful when raising his defenses to the previous disciplinary action taken against him.[6] The basis for those findings was the allegation that Curras had failed to include his mentally ill adopted sister, Madreselva Curras Ortiz, in the Declarations of Heirs for the estates of Mr. Miguel Ortiz Marrero and Mrs. Nemesia Curras Figueroa. The investigation by the solicitor general also noted that Mr. Otto Curras, upon the death of his parents, had sought a Declaration of Heirs naming him the sole Heir to their parents estate,

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[5] Madreselva Curras, the adopted sister of petitioner Otto Curras, who resided in the care of a menta! institution due to a diagnosis of profouns retardation.

[6] Curras was charged with violating Puerto Rico Canons of Legal Ethical Conduct 9, 12, 35 and 38, 4. P.R.L.A Ap. IX.

once again leaving Madreselva Curras unnamed as heir.[7]

The defense of petitioner Curras to the charges of unethical conduct centered around his arguments that he had already been sanctioned with a one year disbarment for the conduct charged and the fact that he did not know that his parents had legally adopted Madreselva Curras until the year 1994 after the subject Declarations of Heirs had been filed. Further, that upon corroborating the information he sought an amendment of said Declarations of Heirs to include Madreselva. In its findings, later adopted by the Puerto Rico Supreme Court, the solicitor general decided this credibility issue against petitioner and imputed that Curras had attempted to unlawfully disinherit his sister and deprive her of her rights as lawful heir to the discussed estates. Mr. Otto Curras vehemently opposed those allegations, and pointed out that none of his errors had resulted in any injury or prejudice to any lawful heirs, including Madreselva Curras, for whom he acted as legal tutor and had assumed all responsibility for her expenses, sustenance, and life decisions, after the death of their parents. In fact, upon the death of Madreselva Curras, petitioner Otto Curras was her sole lawful heir and inherited the totality of her estate.

Nevertheless, on July 31, 2008, the Supreme Court of Puerto Rico issued its judgment in the matter adopting the findings of the solicitor general's office and holding that petitioner Curras had violated 3 of the 4 canons of ethics cited. The opinion came

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[7] In Re Estate of Margarita Ortiz Marrero and Rafael Curras Figueroa, Civ. Number KJV-89-322 (808), Puerto Rico Superior Court, San Juan (April 3, 1989).

during the last work day of the Hon. Francisco Rebollo Lopez as Justice in said court. Thereafter, the Court, with less than the 5 Justices required for a lawful composition, ruled upon petitioners motions seeking reconsideration and seeking provisional remedies. It is under this record that Mr. Otto Curras now petitions for certiorari.

REASONS FOR GRANTING THE PETITION

Petitioner very respectfully argues to this Honorable Court that he was removed indefinitely from the practice of his profession as an attorney without due process of law in violation of his rights under the fifth and fourteenth amendments to the U.S. Constitution. The basis of his claim arises from the adjudication, by an unlawfully constituted Puerto Rico Supreme Court, of two separate motions for reconsideration of its judgment dated July 31, 2008 removing him indefinitely from the practice of law, and the denial of a separate motion requesting provisional measures until the court was properly constituted pursuant to the Constitution of Puerto Rico. The review sought involves only the adjudications by said court after July 31, 2008 while it was not properly constituted and/or lacked quorum.

The matter presented for review is one that truly involves an urgent civil rights issue with the potential to impact the nearly 4 million U.S. citizens that reside in Puerto Rico. Since August 1, 2008, the Supreme Court of Puerto Rico continues to decide cases without quorum or constitutional authority. Such action denies due process not only to the parties involved in the cases decided, but also to the rest of

the populace that has to live under any precedents set by those decisions. The wide array of litigation involved is also cause for concern, as the court unlawfully disposes of cases affecting fundamental rights of citizens in contexts such as liberty and property without affording the required due process. Because the actions of the Puerto Rico Supreme Court also diminish the trust that the people of the commonwealth have in their institutions of government, at a time when wide allegations of corruption have become commonplace, the intervention of this Court is of the essence to restore confidence in government.

ARGUMENT

The Constitution of the Commonwealth of Puerto Rico mandates that the territory shall have a republican form of government, with its 3 branches of government, the legislative, executive, and judiciary equally subordinate to the sovereignty of the people of Puerto Rico. PR Const. Art. 1, Sec 2. In creating the Commonwealth's judicial branch, whose power is to remain in one Supreme Court as the highest court, said constitution establishes that the Supreme Court of Puerto Rico shall be composed of one presiding justice, and four associate justices. PR Const. Art 5, Sec 3. Moreover, the same constitutional provision expressly mandates that the number of justices in the Supreme Court can only be changed by law [statute], and only upon request by the same court. Id. Over the years, the legislature of Puerto Rico has acted to increase the number of justices allowed to sit on the Supreme Court to seven in order to promote its proper functioning. However, it is questionable

whether even the legislature has the authority, absent a constitutional amendment, to decrease the number of justices sitting on Puerto Rico's highest court to a number lower than five. Id.

It is under this framework that the constitutional harms for which petitioner now seeks redress from this court ensue. In its Judgment and *Per Curiam* Opinion dated July 31, 2008, the Supreme Court of Puerto Rico adopted and affirmed the recommendations of the commonwealth's solicitor general to the effect that petitioner Otto Curras had violated three canons of professional responsibility and ordered him indefinitely removed from the legal profession. See, Judgment and *Per Curiam* Opinion dated July 31, 2008, Appendix A. On the same day of said Judgment, the Hon. Francisco Rebollo Lopez retired from the Puerto Rico Supreme Court reducing the number of its sitting justices to four. Subsequently, two separate motions for reconsideration where filed by Mr. Curras in addition to a third motion requesting temporary relief and/or provisional measures until the court was once again properly empanelled pursuant to the Constitution of the Commonwealth of Puerto Rico. See, Motion for Reconsideration (Appendix B); Motion Requesting Provisional Remedies (Appendix C); and Second Motion for Reconsideration (Appendix E). All three

motions were ruled upon by a Puerto Rico Supreme Court composed of only four justices, one of which removed herself from the case due to having a potential conflict of interest.[8] See, Order entered on

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[8] Justice Anabellè Rodriguez Rodriguez was serving as Puerto Rico's attorney general, office under which the solicitor general is a subordinate, at the time the ethics investigation of Mr. otto Curras commenced.

September 11, 2008 (Appendix D) and Order of September 22, 2008 (Appendix F).

As this Honorable Court has held and reaffirmed, individuals have a property interest -- protected by the Fourteenth Amendment to the U.S. Constitution -- in the practice of their chosen professions.[9] Meyer v. Nebraska, 262 U.S. 390. A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process Clause of the Fourteenth Amendment. Dent v. West Virginia, 129 U.S. 114; Slochower v. Board of Education, 350 U.S. 551; Wieman v. Updegraff, 344 U.S. 183. This court has set forth three factors that normally determine whether an individual has received the "process" that the United States Constitution finds due:

> "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893 (1976).

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[9] The Due Process protections of the Fifth Amendment, enforcible against the states under the Fourteenth Amendment, also protect petitioner Curras.

"By weighing these concerns, courts can determine whether a state has met the fundamental requirement of due process - the opportunity to be heard at a meaningful time and in a meaningful manner." Id., at 333.

The first of the listed factors clearly favors petitioner Curras. His affected property interest is his ability to continue practicing the legal profession; his sole source of economic sustenance.[10] In considering the second factor, it is evident that a properly constituted Puerto Rico Supreme Court, with no less than five justices, but up to seven, would have afforded petitioner a fairer opportunity to persuade said court that his removal from the practice of law was not warranted. Not only was that process mandated by the Constitution of Puerto Rico denied to him, but given that reasonable minds can disagree, and that the ultimate decision to disbar him turned strictly on credibility determinations, it is quite possible that if the proper procedure was followed he would have received either a lesser sanction or none at all. Had the panel disbarring him been created from the required pool of Justices, it is likely that differing views would have entered into the consideration of his case.

The third factor is the most complex to consider, but we submit that it also favors petitioner Curras. Puerto Rico's political cycle over the last four years, with the legislature dominated by the new progressive party and the governorship held by a member of the popular democratic party, has led to

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[10] At age 67, and suffering chronic illnesses such as diabetes, it is impractical for him to be retrained and commence a career in a different field.

substantial gridlock in the commonwealth's governance. No place has such gridlock become more notorious than in the filling of the vacancies that have surfaced in the Puerto Rico Supreme Court.[11] Needless to say, the governor and the legislature have not been able to agree on a single candidate to fill said vacancies, and political discourse seems resigned to waiting until after the 2008 elections, when a new government is sworn in, to do so. That scenario has caused a constitutional crisis in Puerto Rico that simply has been ignored by all branches of government.[12] Rather than recessing until it is once again properly constituted, the Supreme Court of Puerto Rico has continued to conduct its business and decide cases with less than the number of justices required by the Puerto Rico Constitution to constitute said court. PR Const. Art 5, Sec 3.

While that course of action is certainly convenient, and the government does have an interest in having all its branches operating, it is no less true that protecting the commonwealth's constitution is its most solemn obligation. To balance this third factor against petitioner would require no less than a finding that the government of Puerto Rico, including its Supreme Court, has an

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[11] The first vacancy opened on April 7, 2005 upon the retirement by age of Justice Baltasar Corrada del Rio; the second came about on December 3, 2007 due to the untimely death of Justice Jaime Fuster; and the last on July 31, 2008 upon the retirement also by age of Justice Francisco Rebollo Lopez.

[12] On November 4, 2008 The New Progressive Party won control of the legislative and executive branches of government, but it is unknown how quickly they will move to fill the vacancies in the Puerto Rico Supreme Court upon the inauguration of the new government on the first week of January, 2009.

interest which supersedes that of upholding its own constitution. It is very respectfully argued that the Government of Puerto Rico can never have a legitimate interest in violating its own constitution; the document from which all its powers emanate. Furthermore, in continuing in session under the discussed circumstances, the Supreme Court of Puerto Rico is usurping powers which were never granted to it by the constitution, Congress, nor the people.

Accordingly, the actions of the Supreme Court of Puerto Rico fail to pass the scrutiny of the Mathews v. Eldridge test and must be overruled on due process grounds. Mathews v. Eldridge, at 319, 335.

While there is no direct precedent we can point to where this court has considered the question presented in this case, it certainly has resolved similar situations in the context of federal courts. One such instance occurred in the Nguyen decision, where this Honorable Court held that:

> "under 28 U.S.C. § 292(a), which authorized the chief judge of a Federal Court of Appeals to designate "one or more district judges within the circuit" to sit on the Court of Appeals in certain circumstances, a three-judge panel of the United States Court of Appeals for the Ninth Circuit had not had the authority to decide two criminal defendants' appeals of their convictions on federal narcotics charges -- where by a purported designation, this panel had included the then Chief Judge of the District Court for

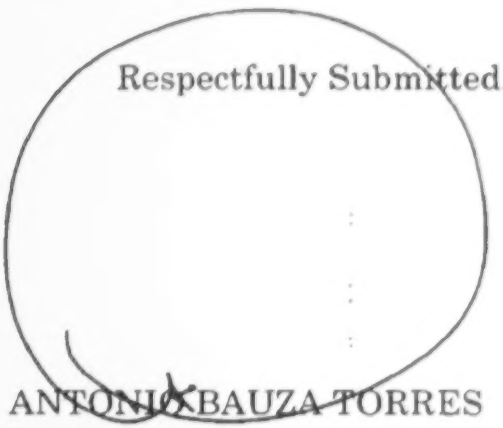
> the Northern Mariana Islands, which was a "territorial" court established by Congress under the Federal Constitution's Article IV, § 3, rather than under the Constitution's Article III." Nguyen v. United States, 539 U.S. 69, 70 (S. Ct. 2003), 123 S. Ct. 2130-2132.

If as in Nguyen, it was proper to vacate the judgment of the Ninth Circuit Court of Appeals panel based on a statutory violation, and where the petitioners had failed to raise the issue prior to their filing for certiorari, it must be equally proper to do so in this case where the violation is one of explicit constitutional mandates affecting a right to property of petitioner -- protected under the federal constitution -- and the issue was properly raised in the Puerto Rican courts. Id. Moreover, the Puerto Rican Constitution was enacted pursuant to the provisions of public law 600 which required not only the support of a popular vote, but ratification by the United States Congress as well. Public Law 600 of the 3rd of July of 1950, Chapter 446, 64 Stat. 314. Henceforth, the actions of the Puerto Rico Supreme Court not only violate the federal rights of petitioner and the sovereignty of the people of Puerto Rico, but also challenges the authority of Congress as exercised in its approval of public law 600 and the ratification of the Constitution of Puerto Rico on July 3, 1952.

CONCLUSION

It is based on the arguments above that petitioner Otto Curras respectfully submits that a writ of certiorari should be granted.

Respectfully Submitted,



ANTONIO BAUZA TORRES
Condominio Lemans
602 Muñoz Rivera Ave.
Suite 402
Hato Rey, PR 00918
Tel. 787-751-1774

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OTTO CURRAS ORTIZ;

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PUERTO RICO SUPREME COURT

Respondent

Petition for Writ of Certiorari to the
Supreme Court of Puerto Rico

PETITIONER'S APPENDIX

ANTONIO BAUZA TORRES
Condominio Le Mans, Suite 402
602 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
TEL. (787) 766-0723/
FAX (787) 751-1774
Attorney for Petitioner

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IN THE PUERTO RICO SUPREME COURT

IN RE OTTO H. CURRAS-ORTIZ	CP-2003-1	

JUDGMENT

San Juan, Puerto Rico, On July 31, 2008

On the basis of grounds expressed in the foregoing *Per Curiam* Opinion, Judgment is hereby entered decreeing the indefinite separation of Otto H. Curras-Ortiz from the practice of law. We impose upon him the duty of notifying all his clients of his present inability to continue representing them, returning all fees received for work that has not been performed, and in due time to inform the different judicial and administrative forums of the Island of his suspension. He must further certify to us, within a term of thirty days from the date of notification hereof, of compliance with these duties and will further serve notice on the Solicitor General.

The Bailiff of this Court will proceed to immediately seize the notarial work product and notarial seal of Otto H. Curras-Ortiz and will deliver same to the Notarial Inspection Office for the corresponding examination and report to this Court.

Thus pronounced and ordered by this Court and certified by the Clerk of the Court. Associate Justice Ms. Rodríguez-Rodríguez did not take part herein.

Aida Ileana Oquendo-Graulau
Clerk of the Supreme Court

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT TRANSLATION OF ITS ORIGINAL IN THE SPANISH LANGUAGE
NOEL ZAMOT
CERTIFIED COURT INTERPRETER-TRANSLATOR BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

IN THE PUERTO RICO SUPREME COURT

IN RE OTTO H. CURRAS-ORTIZ	CP-2003-1	

PER CURIAM
San Juan, Puerto Rico, ON JULY 31, 2008

Through Resolution dated September 8, 1998, Hector Cordero-Vázquez, Superior Court Judge, remanded the conduct and manner of proceeding of the lawyers who participated in the case of Manuel Curras-Figueroa v. Otto Curras-Ortiz, Civil No. EAC92-0327 (611), to the consideration of this Court, for purposes of having same evaluated pursuant to the Rules of Professional Ethics, 4 LPRA App. IX. After ordering the Puerto Rico Solicitor General to perform the corresponding investigation, this Court instructed the Solicitor General to further evaluate the actions of Otto Curras-Ortiz, Esq., who took in the

referenced case in the capacity of a party rather that as a legal representative.[1]

The Solicitor General submitted a First Report that was later amended to address several arguments presented

[1]Otto H. Curras-Ortiz, Esq., was admitted to the bar to practice law in Puerto Rico on November 6, 1980.

by Mister Curras-Ortiz. In synthesis, the Solicitor General recommended that the actions of the Respondent be evaluated in a separate and independent manner; he further held that the investigation performed revealed that Mister Curras-Ortiz violated his duties, as a member of the profession, of behaving himself in a sincere and honest manner both before the Courts of Original Pleas and before the disciplinary forums and, indeed, before this Court. For that reason, the Solicitor General concluded that in the querela filed against Mister Curras-Ortiz he incurred in conduct constitutive of a violation of the Rules of Professional Ethics 9, 12, 35 and 38. In his answer to the amended querela, the Respondent lawyer admitted that he had violated Rule 35 and maintained that the remaining charges were considered to be covered by the first.

This Court appointed Angel F. Rossy-García, Esq., to, in the presence of the parties and in the capacity of special master, to receive the evidence and to file a report to us with his findings of fact and recommendations of law. The Special Master filed his report; and concluded that the evidence presented – to his judgment, clear, robust and convincing – proof that the Respondent lawyer incurred in the unethical conduct that constitutes a violation of Rules 9, 35 and 37 of the Rules of Professional Ethics.

We Hold.

I

That in the year of 1987, Mister Otto H. Curras-Ortiz appeared as a Petitioner before the Superior Court of Puerto Rico, Bayamón Part, in an ex-parte procedure on the declaration of heirs, obtaining a resolution from that forum whereby it declared him as the sole and universal heir of his late uncle Miguel Ortiz Marrero. Subsequently, in keeping with said judicial determination, Mister Curras-Ortiz withdrew and made his the funds that had been deposited in a bank account held by the aforementioned relative.

Years later, the widow and two daughters of the decedent Miguel Ortiz-Marrero, who lived in New Jersey and South Carolina, respectively, filed an equal number of complaints in the Puerto Rico Bar Association against Mister Curras-Ortiz. They argued, in essence, that they were the legitimate heiresses of Ortiz-Marrero and that, although they did not personally know their cousin Curras-Ortiz, they knew who he was. They added that Curras-Ortiz knew and understood that their late uncle had been married in the United States and that he had had two daughters. Moreover, they averred that Ortiz-Marrero had other siblings and relatives in Puerto Rico. Therefore, they maintained, that the declaration of heirs had been obtained on the basis of false information and that the Respondent herein had deceived the court that issued same.

After the corresponding investigation, the Bar Association filed a querela against Mister Curras-Ortiz, wherein it charged him that he had knowingly filed false evidence in the court of original pleas for the purpose of defrauding other heirs of Miguel Ortiz-Marrero and to appropriate the estate thereof

through illegal means. He was then charged that through his conduct and behavior he violated Rules 5, 35 and 38 of the Rules of Professional Ethics.

In his answer to the aforementioned querela, Mister Curras-Ortiz alleged that as of the date on which he filed the declaration of heirs that gave rise to the querela, he did not know that his uncle had left legitimate descendants. He admitted, however, that as of that date there were other collateral relatives who had hereditary rights with respect to the estate in question and that he did not inform the Court of that fact. However, he expressed, that he had not caused injury to any of the relatives because these had no interest in the estate in question and that they had given him tacit consent to act in the manner that he did. He attached, as proof of the foregoing, a statement under oath by a niece of Ortiz Marrero, who averred that she did not know that her uncle had children and that she had no interest in the funds that her uncle left.

The Respondent having admitted that he lied to the judicial forum by expressing under oath that he was the sole heir of the decedent, relying on the admissions and allegations then made by the Respondent, this Court entered a *Per Curiam* Opinion on August 13, 1996, in the case of In Re Otto H. Curras-Ortiz, 141 DPR 127 (1996). In same the Respondent was found guilty of violating Rules 35 and 38 of the Rules of Professional Ethics. As a disciplinary sanction, he was imposed a suspension of the practice of law and notarial practice for a term of one year. Subsequently, through a Resolution entered on September 26, 1997, by this Court, Mister Curras-Ortiz was reinstated as a lawyer. In re Curras-Ortiz, 143 DPR 876 (1997).

After the referral made by Judge Cordero-Vázquez to this Court in the year of 1998, which gives rise to the querela that we today have before us, it became apparent that the reality was quite different from that which Mister Curras-Ortiz presented us several years ago; which is to say that the affirmations made by the Respondent to defend himself in the previous disciplinary procedure did not adjust themselves to the truth.

In the first place, we make reference to the procedural process followed in the case of Estate of Aponte-Palma v. Estate of Nemesia Curras, Civil No. EAC-93-0061, with respect to an action that was filed on March 3, 1993, i.e., two years prior to the filing of the first querela. Among the defendants and counterclaimants in said proceedings are found the Respondent and his sister Madreselva Curras-Ortiz. In his answer to the complaint, Mister Curras-Ortiz admitted that Madreselva was his sister and, furthermore, that she was disabled and that the Respondent was her guardian. Later on, the Respondent expressed that in the first allegation of the counterclaim that "defendants and counterclaimants Otto and Madreselva Curras-Ortiz had been declared, among other things, the sole and universal heirs of their decedent aunt Nemesia." That was made through resolution entered by the Caguas District Court, Civil No. CD-93-126. Now then, it is significant that in the declaration of heirs filed by him in regard to his aunt Nemesia Curras-Figueroa, signed under oath on December 17, 1992, and filed on January 19, 1993, he excluded his disabled sister Madreselva; the latter was also excluded in the resolution that was entered by the

Court according to the petition dated February 3, 1993.

The aforementioned relevant and material information to the first querela filed against Mister Curras-Ortiz was not taken by him to the attention of this Court in the first disciplinary procedure. Contrary to reality, and although known by him, that the declaration of heirs filed by him that gives rise to the querela not only omitted his collateral relatives but also his own disabled sister, he concealed that fact from this Court. Said action by him evidently constituted an aggravation of the ethical violation incurred by him and that was subject of consideration by this Court. The graveness of said actions is manifested when he alleges before this Court that his collateral relatives had not been adversely affected by his actions because they had no interest in the inheritance and had given him tacit consent to act in the manner that he did. At that point in time, he knows that his disabled sister was impeded from giving her consent to that action taken by him; therefore, said information given by him was also incomplete, imprecise and false.[2]

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[2]Madreselva Curras Ortiz was born on April 3, 1959, and was left under the custody of the Respondent's parents when sh was recently born. In the own Respondent's words during his testimony, h knew of the existence of Madreselva when his mother took the little girl home. Thereafter, his parents initiated an adoption procedure in 959 that ended in 1967.

With respect to Madreselva's mental state and as attested in the process by Mrs. Marta Ferrer, Social Worker of Instituto Pedagógico, she has a severe state or mental retardation, is unable to speak and is dependent for all needs of daily life, including feeding and medication. Because of her

On the other hand, on April 3, 1989, Mister Curras-Ortiz filed a petition with respect to the declaration of heirs of his parents Margatita Ortiz Marrero and Rafael Curras Figueroa, Civil Case No. KJV-89-322 (808), before the San Juan Part of the former Superior Court. In consideration of said petition, the Court issued a resolution declaring the here Respondent as the sole and universal heir of the decedents. He thus omitted from the petition and subsequent resolution his disabled sister Madreselva Curras Ortiz.[3]

On December 17, 1992, without having requested an amendment to the resolution for the

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condition, she requires continuous supervision 24 hours of the day.

After the death of the Respondent's parents, Madreselva was left under the custody and care of the Respondent for two years, when she was interned in Instituto Psicopegagógico because of her health condition. Mister Curras-Ortiz is the incompetent's guardian, sees to it that she is attended and provides for all of her personal needs and visits her with regularity.[2] As attested by the social worker, he shows affection for her, behaves like a brother and is the only relative who has approached Madreselva with respect to her.

[3]On November 13, 1991, Mister Curras-Ortiz executed a swon statement before a Notary Public in which he acknowledged Madreselva as his sister with his own surnames. He indicated that the writing in which he was declared as her guardian and that he is the person in charge of Madreselva's well-being through designation by the Federal Social Security and authorized her to receive medical attention, if necessary. Prior to that, on June 21, 1991, he has executed an authorization, in his capacity as the brother of Madreselva with his same surnames, for the rendering of medical and psychiatric services, as well as an authorization for the taking of photographs.

declaration of heirs of his parents[4], he filed a new declaration of heirs with respect to his aunt Mrs. Nemesia Curras Figueroa. Civil Case No. CD-93-126. In this case the Respondent excluded his disabled sister from the list of heirs having the right to participate in the inheritance. Considering the petition as such and the complementary proof with it included, the Court entered a resolution declaring the here Respondent as an heir of Mrs. Curras Figueroa, together with various uncles and cousins of his. In said resolution, as well as in the precious ones filed by him, his disabled sister Madreselva was excluded.[5]

On August 26, 1992, Mister Curras-Ortiz presented his income tax returns for the years of 1987 through 1990. In these, he claimed Madreselva Curras Ortiz as his dependent disabled sister. However, on that date he did not request any amendment whatsoever to the resolutions on the declaration of heirs that he filed and that omitted Madreselva.[6]

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[4]Eventually, the Respondent proceeded to add Madreselva as the heiress of his parents through the filing of a new declaration of heirs in the case of Otto Curras-Ortiz, Petitioner, Ex Parte, Civil No. 1994-1879.

[5]The request for amendment of the declaration of heirs in the case of Nemesia Curras Figueroa to include Madreselva among the heirs if the referenced decedent, was filed by Virginia Curras Carrasquillo on July 5, 1994.

[6]He also claimed her as a disabled dependent sister in his income tax returns for the years of 1991 through 2004.

Continuing his pattern of concealing relevant information, upon receiving the order of this Court for delivery of copies of his income tax returns for the years of 1987 through 1990, the Respondent limited himself to furnishing the first page of the tax returns and to allege that since the solicitor general had not been able to reproduce clear, robust and convincing evidence that he knew the filial binds through adoption, he did not see the relevance in delivering a full copy of the tax returns to him.

He subsequently alleged that what he delivered was all that he had and that in any case his financial affairs were not incumbent upon the Solicitor General.

Last of all, in the process of Appointment of Judicial Administrator that was being attended by Judge Cordero Vázquez, who referred the complaint that gave rise to the present investigation, both the lawyers for the parties and for the Respondent in particular knew that there was a disabled person, the sister of the Respondent herein, Madreselva, and, however, commissions, payments and partial liquidations of hereditary assets were authorized without advising the court of that situation.

II

On any day in which a lawyer is administered an oath before the Supreme Court, he is granted a great privilege: that of allowing him to practice his profession, the utmost honest, that has a rich and extraordinary tradition and in which he plays an important role in our society. In re Buso Aboy, resolution entered on October 26, 2005, 2005 TSPR 162; In re Quintero Alfaro, 161 DPR App. (2004). In

taking the oath as a lawyer, a person is converted into an officer of the Court and an ordained minister of justice and commits himself to performing the highest ministry with the high and lofty competence, commitment and integrity. *Id;* Ramos Acevedo v. Superior Court, 133 DPR 599 (1993). Now then, this privilege entails, among other things, the responsibility of performing the duties that as a lawyer of the Commonwealth of Puerto Rico is imposed by the law and the Code of Professional Ethics. *Id.*

Rule 35 of Professional Ethics imposes upon a lawyer the duty of sincerity and honesty *erga omnes,* In re Franco Rivera and Masini Soler, 134 DPR 823 (1993). This means that this duty is had by the lawyer to everyone, both to his clients as well as to his peers and, of course, to the courts. In re Astacio Caraballo, 149 DPR 790 (2000). Lawyers must always conduct themselves with integrity before judicial forums. In re Curras Ortiz, 141dpr 127 (1996). A lawyer may not provide false information to the court or that does not adjust itself to the truth, nor may conceal truthful information that must be revealed. See: In re Filardi Guzman, 144 DPR 710 (1998). The conduct of all lawyers before the courts must be such that is characterized by sincerity and honesty, and any lawyer who does not adjust himself to the truth of the facts in presenting his cases does not act professionally. In re Peña Clos, 135 DPR 590 (1994).

He who is neither sincere nor honest in utilizing means that are inconsistent with the truth nor may he induce the trier to err by utilizing artifice or false narration of facts or of the law. Rule 35 of the Rules of Professional Ethics, *supra.* See also: In re

Silvaglioni Collazo, 154 DPR 533 (2001). The declaration or swearing of false facts constitutes a violation of Rule 35 of the Rules of Professional Ethics. In re Astacio Caraballo, *supra*. That is because the commitment of a lawyer with the truth must always be unconditional. In re Montañés Miranda, 157 DPR 275 (2002). More than an unreachable ideal, the truth is an inseparable attribute of being a lawyer and, without that, the legal profession could not justify its existence. *Id.* In re Seoalveda Girón, 155 DPR 345 (2001).

We must recall, last of all, that the duty imposed by Rule 35 is violated through the simple objective fact of lack of truth, which presupposes a conduct harmful to the institutions of justice, independently of the motives for the falsity. In re Belk Arce and Serapión, 148 DPR 685 (1999). To incur in this fault, it is not necessary to have violated the truth deliberately or in bad faith, or with the intention of defrauding or deceiving. In re Martínez Odell, 148 DPR 49 (1999). However, these circumstances are important, together with others, in determining the disciplinary sanction that is to be imposed upon the lawyer. In re López de Victoria Bras, 135 DPR 688 (1994).

Finally, Rule 38 requires all lawyers to make an effort, to the maximum effort of his capacity, in the exaltation of the honor and dignity of his profession, even though doing so may require personal sacrifices and must avoid even the appearances of improper professional conduct. Rule 38 of the Rules of Professional Ethics, *supra*. This principle is a call to the legal professional to have a performance that must adhere strictly to the rules of ethics and that it must also reflect the highest degree

of human excellence. In re Nogueras Cartagena, 150 DPR 667 (2000); In re Olivera Mariani, res. on April 3, 2008, 2008 TSPR 58. These duties must be complied with, even though doing so may impose personal sacrifices. In re Belk Arce and Serapión, *supra.* A lawyer may not resort to the administration of justice system if by doing so, and with the intention of advancing his own interest, is unfaithful to the truth. In re Filardi Guzman, *supra.*

Every lawyer is a mirror in which the image of the profession is reflected. In re Santiago Ríos, resolved on December 18, 2007, 2008 TSPR 2. Therefore, any display of conduct that attacks this principle places in question the more valuable performances and benefits to which this professional class has historically contributed. In re Díaz García, 104 DPR 604 (1976).

It is, therefore, necessary for the members of the robed class to be conscious of the fact that the practice of law entails a serious and delicate citizenship function because same represents service, ethics and example. Ramos Acevedo v. Superior Court, 133 DPR 599 (1993); In re Roldós, Maldonado, Cortés y Llorens, 161 DPR 2004 (2004). These are principles upon which a life style is patterned and that same may not be undermined by daily drudgery or by social value ambiance within and around that in which lawyers are engaged. In re Sánchez Rodríguez, 123 DPR 876 (1989).

III

The Solicitor General maintains that Mister Curras-Ortiz' conduct and manner of proceeding is in violation of Rules 9, 12, 35 and 38 of the Rules of Professional Ethics, *supra*. He supports said determination, in the first place, in the fact that during the previous disciplinary process that culminated in the Opinion In re Curras-Ortiz, *supra, the Respondent* failed the truth by expressing before this Court that he had committed an "error by not knowing certain relative" in the drafting of a petition of a declaration of heirs and that other relatives had "tacitly consented" to him claiming the estate. On June 14, 1996, at the time in which Mister Curras-Ortiz appeared before this Court to give excuses for his actions, he certainly knew of the existence of his sister Madreselva and of his legal binds with her through adoption, inasmuch as according to the lawyer himself, from the early part of 1994, he acquired knowledge thereof. Moreover, the Respondent knew that his sister was totally incompetent and could not, therefore, give him her consent.

To said imputations by the Solicitor General, Mister Curras-Ortiz replied that the fact that he did not refer to Madreselva, when the previous querela was pending, was because he was referring to 1987, the date on which he swore the declaration of heirs and that at that time he did not know of his family relationship by reason of adoption. He adds that neither did he have a legal and/or official document to attest to said ties to include her in the petition. He claims that he did not have that knowledge because it was his parents who had total and absolute control of everything related to Madreselva,

including her admission to the Institute, her education and support. He affirms that in 1987 his father was still alive and it was he who controlled everything related to Madreselva. Last of all, he argues that he had always considered Madreselva as a foster sister.

On the other hand, the Solicitor General alleges that the Respondent was untruthful by swearing the petition for the declaration of heirs of his parents, in which he was declared the sole universal heir, which was not true. In his defense Mister Curras-Ortiz alleged that is was in 1994 that he officially knew of the family relationship between him and Madreselva. In consequence, in 1989, when he swore said petition, he did not know of the ties through adoption. He adds that when he attained knowledge of same, he immediately proceeded to amend the resolution that declared him as the sole and universal heir of his parents.

The Solicitor General, in turn, charged the Respondent with having lied on December 17, 1992, in the Declaration of Heirs Petition of his aunt Nemesia Curras Figueroa. That was because, once again, he omitted Madreselva from same. Mister Curras-Ortiz alleges that he did not include her for reasons of need and urgency, motivated by the fact that the heir of he who was the decedent's husband was unduly retiring great sums of money from the estate. For that reason, the petition was presented in a premature and incomplete manner, but, that as soon as he knew of the ties between him and Madreselva, when he located the corresponding birth certificate, he amended the petition and added his sister's name to same. In fact, the Respondent

alleges, that it was at that time that he attained knowledge of Madreselva's adoption.

However, in facing the answer to the complaint in the case of EAC-1993-0061, signed on April 21, 1993, in which the Respondent admitted that Madreselva was his sister and that she was disabled, Mister Curras-Ortiz replied that he did so assuming that the incompetent was his foster sister. He offers the same answer with respect to the affirmations made in the statements under oath for the taking of photographs and for medical services that he signed in 1991, admitting in same that Madreselva was his sister bearing the same surnames.

The explanations given by the Respondent to the imputations of the Solicitor General convinced neither the latter nor the Special Master who concluded that, in effect, at the time of defending himself from the disciplinary proceedings before the Bar Association Commission, in addition to presenting the sworn petition for the declaration of heirs of Nemesia Curras Figueroa, Mister Curras-Ortiz knew the legal relationship between himself and Madreselva by virtue of the aforementioned adoption.

We harbor no doubt whatsoever that in the processing of the complaint in the present case, Mister Curras-Ortiz proferred to both the Solicitor General and this Court false or imprecise information with the intention of derailing the course of the investigation and evading the consequences of his actions within these disciplinary proceedings. The proof to those effects is both robust and convincing.

It is a reiterated rule of law that this Court is not obligated to accept the report filed by the Special Master. Ordinarily, we would uphold the findings of fact that are made, unless prejudice, partiality or manifest error is evident. In re Morell Corrada, 158 DPR 791 (2003). This rule of deference is applicable herein, especially when the Special Master has had the opportunity to hear the witnesses, because he finds himself in the best position to evaluate said evidence. In the present case Mr. Rossy García heard and saw testimony, among others, from the Respondent and concluded that the latter violated the duty of conducting himself in a sincere and honest manner, in both his private life and in the performance of his profession. In consequence, and in the absence of any prejudice, partiality and manifest error, we are of the opinion that Mister Curras-Ortiz violated Rules of Professional Ethics Numbers 35 and 38. The Respondent also infringed upon Rule 35 by refusing to comply with the requirements of this Court and of the Solicitor General for purposes of impeding discovery of the magnitude of his ethical deviations.

Furthermore, the Respondent's conduct violates Rule 9 of the Rules of Professional Ethics which compels a lawyer to observe conduct that is characterized by the utmost respect for the courts. It is definitely a travesty against the administration of justice to deceive and lie to the courts for purposes of advancing personal interests. That, without any room for doubt, is a grave violation.

Last of all, we believe that no clear, robust and convincing proof arose out of the case file to show that the barrister unnecessarily overloaded the courts of original pleas with multiple procedures and

excessive litigation. Therefore, there is no evidence that the Respondent has infringed upon Rule 12 of the Rules of Professional Ethics that imposes the duty of being concise and exact in the processing and presentation of causes.

IV

Taking into consideration the facts hereinabove expressed and by virtue of our inherent power to regulate and discipline the members of the profession, we conclude that Otto H. Curras-Ortiz violated the provisions of Rules 9, 35 and 38 of the Rules of Professional Ethics. He deceived us once and continues to do so. En attention of the unethical and repetitive pattern of conduct displayed by the lawyer, we believe that the foregoing warrants the imposition of an indefinite suspension from the practice of law.

Judgment will be entered in accordance therewith.

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT TRANSLATION OF ITS ORIGINAL IN THE SPANISH LANGUAGE
NOEL ZAMOT
CERTIFIED COURT INTERPRETER-TRANSLATOR BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

IN THE PUERTO RICO SUPREME COURT

IN RE OTTO H. CURRAS-ORTIZ RESPONDENT	CP-2003-1	SUBJECT: PROFESSIONAL CONDUCT

FILED
SEPT 5 2008
3:47 P.M.

MOTION FOR RECONSIDERATION

TO THE HONORABLE COURT:

Comes now the captioned Respondent, through undersigned counsel, and before this Honorable Court, hereby EXPRESSES, ALLEGES AND PRAYS:

1.That last August 28[1], during the morning hours and in his place of residence and professional office, located at 505 Felipe Goyco Street, Barrio Obrero, Santurce, he was personally served with process by two bailiffs of the Honorable Court with a Per Curiam Resolution entered on this past July 31, 2008, on the indefinite suspension from his profession as Lawyer and Notary Public on the grounds of having violated Professional Ethics Rules 9, 35 and 38 (4 LPRA App. IX).

2.Basically, what transcends from the aforementioned decision as grounds for his indefinite disbarment of Mr. Curras-Ortiz has been his lack of

[1]And exactly on his 67th birthday.

candor and honesty in the different appearances that he has made in court "... for purposes of advancing personal interests ..."[2]

The decision referred to gathers some of the instances in which the Respondent appeared as the Petitioner of his parents' Declaration of Heirs and that of his aunt, the late Nemesia Curras-Figueroa, and as a party jointly with Madreselva and other Curras heirs in Civil Case EAC-93-0061[3] to conclude adversely against Mr. Curras-Ortiz. At present the Respondent respectfully reponds to the foregoing in the contrary sense, because no "personal interests" were advanced by the Respondent other than seeking and pursuing the best, not only for Madreselva, but also for the remaining Curras heirs (in case EAC93-0061); and even when none of the other of said heirs even made common cause in the position as allegations that were made in said case by the Respondent and obtained a favorable Judgment.[4]

3.The Respondent's attention is necessarily drawn to the fact that nothing is expressed in and doesn't even mention the referenced decision, although the matter being argued in our previous appearance and/or request for additional findings of fact[5] in regard to the standard of proof that is

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[2]First paragraph at the end of page 18 of the Resolution.

[3]The Court, on the other hand, remained silent in the cases of EAC93-0074 (Caguas Part); 93-2139 (San Juan Part), as in others, to which they referred in his previous appearance on January, ultimo. See footnotes in our appearance, immediately following the foregoing, among others: 8, 9, 10, 20, 20, etc.

[4]In prevailing over the existence in point of fact, of nearly $2,000,000.00 in marital gains of the decedents, when the other party made them seem to be private by failing to mention them in the Complaint for Distribution of the Estate.

[5]With respect to the report filed by the Hon. Rossy García, Esq., Master.

required and must be taken into consideration in disciplining a lawyer according to the decision in In Re: Barreto Ríos, 157 DPR 350 (220).

According to said precedent as expressed on page 356, that: "... this rule of law responds to the fact that the disciplinary procedure is not aimed at punishing the complainee for the fault committed but rather to protect the community and the profession through an investigation into his moral conditions to determine whether he is able to continue practicing law."

Without a doubt, the proof that arises in the present disciplinary procedure demonstrated that at the end of the road and/or at final count, the only interventions as allegations in said judicial procedures, when he so intrepidly and accurately defends the hereditary rights and interests of the Nemesia Curras-Figueroa decedent, prevailed in same and in the results thereof, in so many significant benefits, that otherwise would not have been recognized. Therefore, the Respondent respectfully moves that this Honorable Court, in due time highlight and acknowledge same, because that would necessarily show that the Respondent should not have been disbarred[6].

4.Moreover, and contrary to the conclusion, the Respondent respectfully insists that the complainee has again been unduly processed for the same facts and circumstances for which he was disciplined in the previous querela, to that effect we again call to the attention of the honorable court that our arguments were included in the previous appearance under Finding of Fact 9 (pages 13

[6]We again call attention to and see our previous motion on pages 6 through 8, Findings of Fac, 1, 2 and 3.

through 18). In other words, we understand that said argument should have been necessarily considered because, as was argued in said appearance, the facts that serve as the essential and fundamental basis for the filing of the querela as well as for the resolution thereof have been and/or represented as, with no more and no less than an untimely motion for reconsideration of the previous penalty imposed of a one year suspension in the case of In Re: Curras-Ortiz, 141 DPR 127 (1996)[7].

5.We once again insist that the results reached by the Honorable Court to the effect that the Respondent committed violations of the Rules of Ethics 9, 35 and 38 by offering: "... false or imprecise information with the intention of misleading the course of the investigation and avoiding the consequences of his actions within the disciplinary proceedings[8]"; additionally that said false and imprecise information was made: "... for purposes of advancing personal interests[9]; averring the following. To which the Respondent responds and again insists that as they did before in his appearance requesting findings of fact that explain the possible

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[7]Once again see Finding of Facts, number 9, on pages 13 through 18; and see further also and demonstration of the fact that the Respondent would again be sanctioned for the same facts and previous querela alluding to the Resolution of this Honorable Court at Page 16, final paragraph, in expressing himself in the following manner: "... those who conclude that, in effect, the appropriate time to defend onself from disciplinary procedures before the Bar Association Commission and before the Forum ...." (Taking into consideration that the previous querela was filed by the Bar Association rather than by the Solicitor General, such as in this case).

[8]See page 17, first sentence of the Per Curiam judgment entered.

[9]See page 18, first paragraph, next to last sentence.

inconsistencies in his different appearance and/or judicial and/or administrative and/or personal interventions[10], with respect to which said inconsistencies and/or contradictions were inconsequential and also irrelevant to the conclusion in reference to whether the Respondent violated sincerity and honesty which are required by Rules 35 and 38 of the Rules of Professional Ethics. But moreover, were made: "... for purposes of advancing personal interests ..."[11] Nor were they, even less so, that they were made to provide: "... false or imprecise information with the intention of derailing the course of the investigation thus evading the consequences of his acts within these disciplinary proceedings ... .[12]"

The Respondent respectfully reiterates and insists – as he has done so since the onset of this long and torturous disciplinary procedure[13] – that the complainee stood to gain and/or obtain nothing for his own benefit, as he did in the previous querela, by accepting the charges therein filed and denying in

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[10]See pages 20 through 23, under letters A through D of the previous writing.

[11]See again first paragraph, next to last sentence, on page 18 of the decision entered against the Respondent.

[12]See the first paragraph on Page 17 of the Judgment entered against the Respondent.

[13]It was precisely ten years ago, according to the Resolution entered by the Court of Original Pleas through Judge Vázquez on September 8, 1008, and to which the complainee, as will be shown in the disciplinary file, was always ready to explain in response to all requirements that were made by this Honorable Court and by the Attorney General, except for the arguments that he in good faith may have made to the best of his information and belief. On other words, he never refused and/or concealed his appearance with frivolous rationale to explain all of the situations with which he was confronted throughout those ten years.

turn that he knew nothing of his true parentage through adoption in 1987 with respect to the proceedings in regard to the Declaration of Death of his uncle Ortiz Marrero, although he clarifies at the same time that said possible inconsistency in his appearance before this Honorable Court in 1996, in which he acknowledges his responsibility and must be retroactive to 1987, when he incurred in the ethical violation. We insist that there is nothing contradictory or inconsistent, with that caveat, where it may be inferred – as found by this Honorable Court – that he was thereby evading the course of the disciplinary investigation for purposes of advancing his own personal interests and/or trying to induce commission of an error.

If anyone tried to induce the Court of Original Pleas with less than correct, without saying false, representations, knowing better than anyone above all and are therefore not honest and sincere in accordance with the aforementioned Rules 35 and 33, it was the legal representatives of the Estate of Aponte-Palma in case EAD-93-0061 AND EAC-93-93-0074, concealing the fact that the nearly $2,000,000.00 that was on deposit in different bank accounts were in fact marital gains assets and not privately owned as they tried establish which they didn't even refer to it as they should have reflected it in its Complaint EAC-93-0061.[14] By the same token, they also were in the other case on Declaratory Judgment (EAC-93-93-0074) when they also tried to record them as such, but on the contrary in the case

[14]By the same token they also tried to treat the real property denominated "La Traviata" as a marital gains asset when the fact was that just as the three other private items of real estate held by decedent Nemesia Curras-Figueroa.

of "La Traviata," instead of claiming it as a private asset of the Decedent Curras-Figueroa, it was a marital gains asset that inured to both decedents. In neither of the two cases did the pretexes of the Aponte-Palma Heirs[15] prevail.

Equally also and in consonance with the immediately foregoing with respect to the fact that the Estate of Aponte-Palma, was neither sincere nor honest in their allegations before the Court of Original Pleas, but in the San Juan Court there was another case related to the Estate of the Decedents (93-2139)[16], on the subject of Foreclosure of Mortgage against the complainee and Madreselva in which they could not prevail either when said Motion was dismissed because, among other reasons, the facts that they alleged were also incorrect.

Therefore, however, it appeared and should have appeared from the documents and/or the referenced case files such as the rest of the documents attached to this disciplinary procedure and evidence allowed within same, it must and should necessarily be taken into consideration to the most favorable and positive effect of the position of the complainee, all of the absolutely positive history that inured to the maximum hereditary rights prevailing with respect to the position of the Curras heirs, thanks only for the ferrous defense that was

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[15]It is again respectfully insisted that this Honorable Court certify both of these case files from the Caguas Court of Original Pleas for a better analysis and consideration of the facts and circumstances expressed.

[16]Again we respectfully insisted that this Honorable Court certify this other case coming from the case files of the San Juan District for a better understanding, weighted study and analysis of this Motion for Reconsideration.

made on their behalf by the Respondent.[17] Unfortunately, the aforementioned Judgment makes no reference with respect hereto as, in our judgment, it should have referred to but, even moreso, when no allegation has been made by either the Honorable Solicitor General in this long disciplinary process or in the decision entered with respect to dishonest actions and/or of the complainee of having taken undue advantage of the appropriation of money from Madreselva and/or against any Curras heir and/or caused any injury to any person. On the contrary, the dealings of the Respondent with respect to Madreselva until just before her death in June of 2007, were one of total good treatment and well being toward her. See in this regard and corroboration of the foregoing, Footnote #2 of the present Decision or Judgment, last paragraph and, therefore, after a dispassionate as well as weighted and objective analysis of the hereditary drama, the balance must necessarily be inclined in favor of the Respondent with respect to the fact as to whether or not he acted with sincerity and honesty, that his actions within the special peculiarities of same, were, albeit inconsistent in some instances, were not in that degree so grave as to characterize them as violations of the rules of ethics at issue. Especially, when one cannot lose sight of the fact that in the end, as we have previously argued *ad nauseam,* that we are dealing with no more and no less than an untimely motion for reconsideration by the Solicitor General from a sanction that had been previously imposed, which we would considered to be lenient in

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[17]See again Footnote 7 of our previous writing and see further Footnote 8 on page 6 thereof.

comparison with the charges previously imputed. *In Re: Otto H. Curras-Ortiz*, 141 DPR 127 (1996).

FINAL COMMENTS

In conclusion, we wish to underscore the fact that it would really be a shame and disastrous for the Respondent, who at the age of 67[18] and possibly in the sunset of his worldly life as a professional and suffering a condition of chronic diabetes, to be indefinitely suspended from his profession as a lawyer – his sole source of income – on the grounds of a set of facts and circumstances so unique and with so many complications and situations such as have arisen and so intertwined in this drama among human beings, especially when no injury has been caused to anyone by the Respondent and when, to the contrary, the only thing that is translucent in same has been that the Respondent, and only he, was he who at all cost avoided that an estate of so much money (of nearly $2,000,000.00) remained only in the hands of the heirs of the Estate of José R. Arbona-Palma, as the Respondent has clearly demonstrated and proved.

Wherefore, in light of the foregoing expressed and argued, it is respectfully requested that this Supreme Court, once it has been constitutionally constituted, proceed once more to analyze the case file herein, jointly with the arguments herein expressed, order the dismissal and exoneration of the

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[18]And who was served with notification of this decision exactly and the same day in hours of the morning by the bailiffs of this Court, while he received a telephone call of congratulations from his daughter Nuria from the State of Florida where she resides.

complainee and/or proceed to enter any other Order and Resolution more favorable to him.

RESPECTFULLY SUBMITTED.
In San Juan, Puerto Rico, on September ,2008

I Certify: That on this same day I am serving a true and exact copy hereof to the Honorable Solicitor General of Puerto Rico, P.O. Box 1901, San Juan, PR 00902-1901.

(Signed)
ANTONIO BAUZATORRES,ESQ.
PR BAR NO. 2027
COUNSEL FOR THE RESPONDENT
LE MANS BUILDING, OFFICE 402
602 MUÑOZ RIVERA AVENUE
HATO REY, PR 00918
TEL. (787) 766-0723

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NOEL ZAMOT
CERTIFIED COURT INTERPRETER-TRANSLATOR BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

IN THE PUERTO RICO SUPREME COURT

IN RE OTTO H. CURRAS-ORTIZ RESPONDENT	CP-2003-1	SUBJECT: PROFESSIONAL CONDUCT

MOTION FOR PROVISIONAL AND / OR TEMPORARY REMEDIES UNTIL THE HONORABLE PUERTO RICO SUPREME COURT IS DULY CONSTITUTED PURSUANT TO THE COMMONWEALTH OF PUERTO RICO CONSTITUTION

FILED
SEPT 5 2008
3:47 P.M.

TO THE HONORABLE COURT:

Comes now the captioned Respondent, through undersigned counsel, and before this Honorable Court, hereby EXPRESSES, ALLEGES AND PRAYS:

1.That last August 28[1], during the morning hours and in his place of residence and professional office, located at 505 Felipe Goyco Street, Barrio Obrero, Santurce, he was served with a *Per Curiam* Resolution dated July 31, of the current year, on the indefinite suspension from his profession as Lawyer and Notary Public.

2.Jointly with the present Motion and Request he attaches a Motion for Reconsideration of the

[1]And exactly on his 67th birthday.

aforementioned Resolution to which he is entitled by law in accordance with the Rules of this Court.[2]

3.Pursuant to Article V, Section 3 of the Constitution of the Commonwealth of Puerto Rico, this Honorable Court is composed of one Chief Justice and a minimum of four Associate Justices. Pursuant to that same Article, said composition may be increased, at the request of the Court itself, to up to a maximum of nine justices, including its Chief Justice.

As is publicly known, this Honorable Court is presently comprised of only four justices, including its Chief Justice because, precisely on last July 31[3], a vacancy arose when the Honorable Francisco Rebollo López, Associate Justice, retired upon reaching the regulatory age of 70 as provided by that very Constitution.

4.As appears from the aforementioned *Per Curiam* opinion entered against the Respondent, on the last page operative page of the judgment dated July 31, 2008, it states that Associate Justice Ms. Annabelle Rodríguez-Rodríguez[4] did not take part in the judgment, thus the decision was entered by four of the justices of this Honorable Court.

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[2]Rule 48(B).

[3]The date on which the decision against Mr. Curras-Ortiz was entered.

[4]As appears from the lengthy procedural history of the querela against Mr. Curras-Ortiz, the Honorable Solicitor General assigned to file the four charges against him, appeared in the case at bar through the Secretary of Justicewhen she held that position at the time, the presently designated Associate Justice Rodríguez-Rodríguez.

5.The captioned Respondent, through counsel, respectfully considers that while the unique situation exists with respect to the Honorable Supreme Court, it is not presently duly constituted by containing a lesser number of justices that must comprise the Court, therefore, it cannot perform the constitutional duties and prerogatives that it is obligated to consider, until such time as it is constitutionally composed of at least five of its justices.

6.Therefore, also the Respondent has the perfect right to file his Motion for Reconsideration before his indefinite disbarment from his profession becomes Final and Firm, as should be duly considered by this Honorable Court, as it should be duly and constitutionally constituted and since it is not presently configured as hereinabove mentioned, we therefore move that his disbarment be temporarily stayed until this Honorable Court is duly composed and constituted as the Competent Court that it is, when the current vacancies are duly filled by the Governor of Puerto Rico and take the oaths of office pursuant to applicable law.

Wherefore, in keeping with the foregoing expressed, it is respectfully requested that this Supreme Court Grant this motion to the effect of staying the effects of the disbarment of Otto H. Curras-Ortiz, Esq., allowing him to continuing to practice law, until the Motion for Reconsideration filed is eventually considered by this Supreme Court when it is duly and constitutionally constituted and complete.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on September 5, 2008.

I Certify: That on this same day I am serving a true and exact copy hereof to the Honorable Solicitor General of Puerto Rico, P.O. Box 1901, San Juan, PR 00902-1901.

(Signed)

ANTONIO BAUZA-TORRES, ESQ.
PR BAR NO. 2027
COUNSEL FOR THE RESPONDENT
LE MANS BUILDING, OFFICE 402
602 MUÑOZ RIVERA AVENUE
HATO REY, PR 00918
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THE UNITED STATES COURTS

IN THE PUERTO RICO SUPREME COURT

IN RE OTTO H. CURRAS - ORTIZ	CP-2003-1	

SUMMER CHAMBER COMPRISED OF THE CHIEF JUSTICE MR. HERNÁNDEZ DENTON, ASSOCIATE JUSTICE MR. RIVERA and ASSOCIATE JUSTICE MRS. FIOL-MATTA

RESOLUTION

San Juan, Puerto Rico, On September 11, 2008.

Upon evaluation of the "Motion for Provisional and/or Temporary Remedies" and "Motion for Reconsideration," filed by the Petitioner, same are denied

Thus ordered by the Court and certified by the Clerk of the
Supreme Court.

(Signed)
Aida Ileana Oquendo-Graulau
Clerk of the Supreme Court

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IN THE PUERTO RICO SUPREME COURT

IN RE OTTO H. CURRAS- ORTIZ RESPONDENT	CP-2003-1	SUBJECT: PROFESSIONAL CONDUCT

FILED
SEPT 17 2008
3:21 PM

SECOND MOTION FO RECONSIDERATION

TO THE HONORABLE COURT:

Comes now the captioned Respondent, through undersigned counsel, and before this Honorable Court, hereby EXPRESSES, ALLEGES AND PRAYS:

The Respondent respectfully requests, in light of the Court's refusal to reconsider our immediately previous motion to the effects requested, pointing out that the genesis of this lengthy disciplinary procedure was the Resolution entered by the Hon. Judge Cordero Vázquez, in connection with litigation that originated out of the estates of Aponte-Palma and his spouse Nemesia Curras-Figueroa, allegedly because none of the appearing lawyers made it kown that one of the parties, Madreselva Curras-Ortiz, was incompetent, even though this fact was clearly seen in the allegations made in EAC-93-0061 AND EAC-93-0074 proceeding from the Court of Caguas. That it, therefore, had to investigate their conduct.

The Respondent strongly calls attention to the undeniable fact that it obviously cannot be overlooked that because of this situation, no adverse result occurred against any of the lawyers because no disciplinary charges were filed and that instead the Respondent was selectively charged by reactivating a querela that had already been resolved and adjudicated.

That is to say that the genesis of this whole situation was inconsequential, probably because no injury was caused to any of the parties and even less so to the incompetent and central axis of this whole human drama, Madreselva, because as well shown in the referenced case files, all of the appropriate correcting measures were taken that the situation merited as indicated by the Honorable Judge Cordero Vázquez.

Thereafter, if nobody is adversely affected (the parties), and none of the lawyers involved were charged as they could have been, why should the Solicitor General take this occasion to selectively aim the disciplinary scope at the Respondent by resuscitating the old querela supposedly because the previous sanction was not appropriate. But, even moreso, when this querela had nothing to do with the Solicitor because it originated in the Bar Association and not in the Office of the Solicitor General.

As we have argued before, this impacting judicial drama and of daily life surrounding Madreselva is at the most reduced to something that is completely inconsequential. In the first place, because the complainee did not in the absolute take

advantage of her personal situation for his own benefit and/or to advance his own personal interest as expressed in the decision entered against him[1], because he did not take a single undue cent from her as corroborated by the alluded case files in question as, in fact, neither does the Resolution itself to the effects as corroborated by the one entered by the Hon. Judge Gutierrez-Nuñez[2]; on the contrary, he protected her to the maximum in the referenced lawsuits, when none of the other Curras' did, when none of them did so through respective counsel and benefitted financially to the maximum in such a juicy millionaire estate, as shown by the others cases.

He likewise not only protected her hereditary rights in the face of allegations that are so incorrect and/or aimed at inducing the Court to err with respect the Hereditary Assets in question by the Estate of Aponte-Palma through their own attorneys although knowing the origin of their provenance[3], but also protecting her physically, keeping her sheltered, once her parents passed on, in the best place that exists in Puerto Rico for people who suffer mental retardation[4], as Madreselva suffered, and

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[1]See page 18, first paragraph, final sentence of the *Per Curiam* decision.

[2]See Resolution in question dated January 31, 2002, in case EEX-99-0044, of the Caguas Court.

[3]And possibly in violation of the Rules of Ethics themselves 35 and 38 for which, on the contrary the complainee would be sanctioned (for not being sincere and honest).

[4]Instituto Psicopedagógico de Puerto Rico, from where they took Madreselva on the day of the hearing held against the

without taking one single cent of the amount of her hereditary share that is deposited in the Caguas Court for her custody, care and shelter with a part of the Social Security benefits that have been assigned to her and the rest and/or difference is covered by the Respondent with his own personal funds.

As we have expressed before, the particular situation of the Respondent would be that he would never end this *Via Crucis* that began more than a decade ago and, contrary to the doctrine of this Hon. Court, that cases cannot have eternal life at bar and as the recently retired Hon. Associate Justice Rebollo-López expressed in his dissenting opinion in the case of: Aponte-Hernández vs. Sánchez-Ramos, 2008 TSPR 81, at page 320, with respect to: "This Court, has very accurately expressed that no party has the right to have his case attain eternal life in the Courts , thereby keeping the other party in a state of uncertainty Municipio de Arecibo vs. Almacenes Yakima, 154 DPR 217 (2001); Caratini vs. Collazo Syst. Anna Lysis, Inc., 158 DPR (2003)[5]".

The facts that are presented against Mr. Curras-Ortiz are very unique, taking into consideration that involve a girl with disabilities who had the good fortune, without knowing her

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complainee and were able to corroborate her physical and mental state.

[5]Additionally see also, at page 17, our Motion for Additional Findings of Fact and/or Objection, with respect to the analogy of the doctrine of *res judicata* from the civil law and double jeopardy from penal law to the Disciplinary Procedure in question.

procedence and contrary to all that is normal and reasonable in a situation such as hers, who was adopted by the Respondent's parents and gave her all the attention and love that they bestowed upon her; and who, after the death of both parents, succeeded them in said role by him. As we have argued before, if anything was not explained to the satisfaction of the Hon. Solicitor General, it would have been mere isolated inconsistencies but that, seen and analyzed and weighed as a whole or in conjunction[6], should take the spirit of the Court that in the balance of interests, the scales should tip in favor of Mr. Curras-Ortiz. Necessarily for his shown competent performace in all of the referenced judicial lawsuits.

We would not want to omit mentioning a fact that in our judgment is very important and relevant in this whole human drama through which the Respondent is undergoing at this age of his worldly life, which is also contrary, the grounds expressed by the Honorable Court to justify its Resolution, disbarring him indefinitely from his only source of sustenance in his profession as a lawyer, determining that he had lied to and/or deceived the Court[7] on the existence of Madreselva, mentioning the fact that he gained nothing and/or advanced his own personal

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[6]In the same manner that this Court has expressed that the instructions given by a Court in criminal cases, they should be considered as a whole rather than separately in the same manner as in the present case, and the that totality of the circumstances be seen as a whole and not separately as would be the scarce instances emphasized to conclude that the complainee was not sincere and honest.

[7]For purposes of advancing his own personal interest.

interest by explaining the inconsistencies in which he incurred, if at any rate he was clearly accepting the facts imputed against him in another querela that, after all, was not really relevant in said controversy.

We also respectfully consider that it is necessarily very important and also relevant, that prior to final disposition for the time being of this Reconsideration, as we have been consistently requesting from the outset of this disciplinary procedure many years ago, that this Honorable Court minutely examine the court case files[8] to which we have been referring and which gave rise to the referral of disciplinary proceedings by the Hon. Judge Cordero-Vázquez .

By the same token, the Respondent respectfully moves this Honorable Court that if after of a weighted weighing of the most fair and juridical balance and taking into consideration all of the details and positive considerations in which the aforementioned judicial processes in favor of the position of the Curras heirs culminated, and also, therefore, in favor of the main central axis in this judicial drama, Madreselva, whether the sanction imposed of an indefinite disbarment of the Respondent if it prevails in its sanction against him, isn't one that is disproportionate in view of the circumstances and facts for which the Respondent was sanctioned. We respectfully consider that if the *Per Curiam* opinion prevails and whose reconsideration we hereby move, the most fair and judicially appropriate sanction would be an

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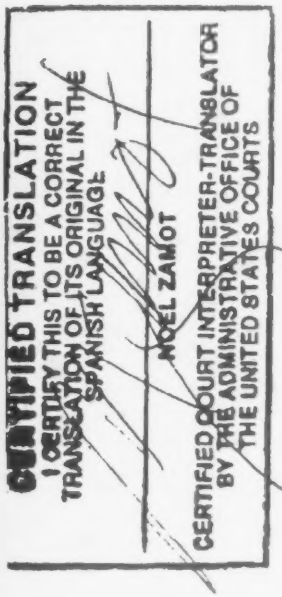
[8]EAC-93-0061; EAC-93-0074; EAC-92-0327; EEX-91-0119, all from the Caguas Court, and 93-2139, from the San Juan Court.

admonition and/or temporary suspension of no more than six months[9].

WHEREFORE, IN LIGHT OF THE FOREGOING EXPRESSED, it is respectfully requested of this Honorable Court to GRANT the present Motion for Reconsideration to the effects hereinabove expressed and requested.

RESPECTFULLY SUBMITTED.
In San Juan, Puerto Rico, on September , 2008.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ANTONIO BAUZA-TORRES, ESQ.
PR BAR NO. 2027
COUNSEL FOR THE RESPONDENT
LE MANS BUILDING, OFFICE 402
602 UÑOZ RIVERA AVENUE
HATO REY, PR 00918
TEL. (787) 766-0723

I Certify: That on this same day I am serving a true and exact copy hereof to the Honorable Solicitor General of Puerto Rico, P.O. Box 1901, San Juan, PR 00902-190

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[9]The present case is compared to the recent decision in: In Re: López Montalvo, 2008 TSPR 42, where a suspension of one month was imposed; also in In Re: Santiago Tirado, 2008 TSPR 86, on facts similar to ours.

IN THE PUERTO RICO SUPREME COURT

IN RE OTTO H. CURRAS-ORTIZ	CP-2003-1	

SUMMER CHAMBER COMPRISED OF THE CHIEF JUSTICE MR. HERNÁNDEZ DENTON, ASSOCIATE JUSTICE MR. RIVERA and ASSOCIATE JUSTICE MRS. FIOL-MATTA

RESOLUTION

San Juan, Puerto Rico, On September 22, 2008.

Upon evaluation of the "Second Motion for Reconsideration," filed by the Petitioner, same is denied. Give compliance to the previous resolution.

Thus ordered by the Court and certified by the Clerk of the Supreme Court.

(Signed)
Aida Ileana Oquendo-Graulau
Clerk of the Supreme Court

Suspension of the lawyer became
final and firm on
Sept. 23, 08

By: (Signed)
Asst. Supreme Court Clerk

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